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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 191

GERALDINE SNELL, MIRIAM RAMOS and JUAN MALAVE, Individually and on Behalf of Their Minor Children, and on Behalf of All Other Parents of Needy, Dependent Children, and ROBERT WHALEY, and HELEN MARLEY, Individually and on Behalf of All Others Similarly Situated,

Appellants,

GEORGE K. WYMAN, as Commissioner, New York State Department of Social Services; MITCHELL GINSBERG, as Commissioner, New York City Department of Social Services,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

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The appellants have appealed from a judgment of the United States District Court for the Southern District of New York. The three-judge Court (one judge dissenting) dismissed appellants' suit for a declaratory judgment and injunctive relief, seeking to invalidate and restrain enforcement of certain statutes and regulations which impose repayment obligations upon welfare or relief recipients of cash assistance in New York State.

The appellee Mitchell Ginsberg moves to affirm the appeal on the ground that the questions presented are so insubstantial as not to need further argument.

Statement

This is a direct appeal from a judgment entered on March 16, 1968, by a district court of three judges convened pursuant to 28 U.S.C. § 2281, dismissing the complaint which sought a declaratory judgment and injunctive relief restraining enforcement of certain New York statutes and regulations which impose repayment obligations upon recipients of welfare relief payments.

ARGUMENT

The questions raised by the appellants lack substantiality. The statutory provisions authorizing public welfare officials in New York to recover payments made to welfare recipients where they are discovered to have property, to obtain liens on claims and suits for personal injuries of such recipients, to be reimbursed from insurance on the life of the recipient and to be given a deed or mortgage on real property of a recipient are not in conflict with any federal law and not violative of any constitutional provision.

(1)

The basic theme of the appellants' argument is that the provisions for recovery of moneys from welfare recipients in the New York statutes are inconsistent with good social welfare considerations. Realizing that the wisdom of social legislation is normally a matter for legislative determination, the appellants attempt to raise what they regard as proper social welfare practices to the level of constitutional rights.

Even at the constitutional level the appellants find it necessary to seek a preferred status. They urge that the cases which deal with "economic due process" should not be treated as applicable. They seek not only to have the making of payments to those on the welfare roll transformed into a fundamental constitutional right but to substitute for the usual standards for determining whether State social legislation is valid a new standard based on the views of social work experts.

While the dissenting judge in the court below did not adopt this argument fully, he found it necessary to rest his dissent on bases which depart from normal constitutional standards. He would have invalidated the New York statute because of "the inelegance of the scheme designed, the ease of correcting it by more discriminating methods" and because of "the insubstantiality of the interest served" (Juris. Statement, p. 45). The last quoted phrase undoubtedly refers to the fact that recoveries from welfare recipients amount to approximately $5,000,000 while State welfare expenditures exceed a billion dollars.

To support the application of these unusual constitutional standards he found it necessary to treat the recoveries from welfare recipients as an interference with a fundamental aspect of freedom. Nevertheless, he conceded that a state may legitimately attempt to conserve its resources by imposing some obligation to repay on persons who receive public assistance. He indicated that he would regard a recovery statute as constitutional if it would "exempt a modest interest in real property or insurance and at least some part of the damages recovered for personal injury" (*Ibid.*, p. 46).

This approach of the dissenting judge is plainly that of a thoughtful legislator; it is not, however, the application of standards used in determining the constitutionality of statutes.

It may be that a recovery statute which conformed with the standards of the dissenting judge or those of the social work experts relied on by the appellants would result in more relief recipients ultimately escaping from or keeping themselves from returning to the welfare rolls. Similarly, we might ultimately have fewer indigents if the test for welfare relief eligibility were higher or lower; if earnings by relief recipients were not treated as a basis for reducing welfare payments; or if a guaranteed annual wage were provided instead of the present welfare payments. These are questions, however, of legislative judgment, not constitutional issues.

(2)

It is not arbitrary or capricious to require that those who are supported by the State shall make repayment when they obtain financial windfalls. It is not unreasonable for the State to condition its grant of aid on such reimbursement.

There is no irrationality in a requirement that a relief recipients who recovers damages in a personal injury case must, after retaining a two-year budget allowance for himself, repay the State out of the balance of the proceeds of his judgment or settlement. It is suggested by the appellants that, as a result of reimbursing the State, the person may return to the relief rolls. Certainly this is a real likelihood in a situation where the injury is a disabling one. A person who could not earn a living prior to the disability is not likely to be able to do so after such an injury. A reimbursement requirement, however, is not unconstitutional merely because of such a possibility. The logic of appellants' arguments in this respect, carried to an extreme, would mean that a person who fraudulently concealed assets in order to obtain relief could not be required to make reimbursement where there was a likelihood that doing so might result in his ultimately requiring welfare relief.

Nor is it unreasonable for the State to reimburse itself from life insurance paid on the death of a welfare recipient. This is, in effect, a part of his estate. There is no real difference between such insurance and any other property or moneys in his estate.

It is difficult to conceive the rationale of an argument that would treat as arbitrary and capricious a requirement that one who owns real property at the time he seeks or obtains relief payments must deed or mortgage the property to the State as security for repayment out of the proceeds of the ultimate sale of the property. The State could refuse to grant relief payments until the real property were sold and its proceeds exhausted in providing living expenses. Instead it permits the recipient to obtain relief payments and retain the property. In return for this benefit it insists on the real property being pledged to it.

We turn now to the specific constitutional arguments of the appellants:

a. The Supremacy Clause.

The appellants make this argument on the theory that the New York repayment provisions are in conflict with federal legislation. They do not, however, point to any provision of federal law which, directly or indirectly, bars such state statutes. They rely instead on the provisions of federal law authorizing appropriations by the federal government to aid states which grant relief payments (e.g. 42 U.S.C. §§ 601, 1351). These provisions merely state that the appropriations are to enable the states to furnish financial assistance to help recipients "attain or retain" capability of self-support. Surely these federal provisions do not bar the New York provisions for reimbursement out of property already owned or moneys acquired in the nature of windfalls. The New York statutes and the federal appropriation provisions are not

in such direct conflict that they cannot be reconciled or consistently stand together. *Kelly* v. *Washington*, 302 U. S. 1, 10 (1937). It would seem that they are not in conflict at all.

b. Equal Protection.

Much of the argument by the appellants with regard to equal protection borders on the absurd. For example, it is urged that the State reimbursement provisions deny equal protection to the poor because tax laws permit oil depletion allowances and other laws, undoubtedly federal, grant transportation and farm subsidies to the affluent.

The appellants also point to the provision in the federal "medicaid" law restricting reimbursement provisions in a state plan for such medical assistance. 42 U.S.C. § 1396a (a), (18). It is unnecessary to discuss the question whether a federal law dealing with one aspect of welfare can result in a state statute dealing with another aspect becoming an unconstitutional denial of equal protection. It is sufficient to point out that a legislative body could have reasonable grounds for treating the assistance given to the "medically indigent" in a manner differing from that provided for payments granted to the general run of indigents.

c. Due Process.

In part the due process argument of the appellants appears to come down to a contention that the property rights of the indigent are superior to, and are entitled to greater constitutional protection than, those of other citizens. Another element of their argument amounts to a contention that due process is violated whenever there is a basis for urging that a provision in a welfare law may deter a person from seeking such assistance or may prevent a woman from retaining assets which, if retained, would help her in obtaining a husband.

It is even urged that due process bars a reimbursement provision whenever assets "could be put to better use" by the welfare recipient (Juris. Statement, p. 12). In essence, the argument is that due process is violated because, absent the State reimbursement provisions, one of the appellants might have used the money to set up a business, another could have established a reserve for burial purposes, and the others could have used the money for education of their children.

All of these are worthy purposes. A legislature may consider them in designing its legislation, but a refusal by a legislature to make provision for such exceptions in adopting reimbursement laws does not constitute a violation of due process.

CONCLUSION

The judgment of the District Court should be affirmed.

July 23, 1968.

Respectfully submitted,

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